Supreme Court, U.S.
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No. 05-

IN THE

Supreme Court of the United States

SONA GHARABAGUI and HOMA RASTEGAR,

Petitioners,

v.

SOGHRA KARABAGUI,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE CALIFORNIA COURT OF APPEAL, SECOND APPELLATE DISTRICT

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

May a wealthy citizen of a foreign country visiting the United States on a temporary tourist visa at the time of his death in California be deemed domiciled in that state, so as to permit California courts to apply the state's inheritance law, its community property law, and its joint tenancy law, to property located outside of the state, in violation of the law of the tourist's native country, as reflected in a probate court judgment in that country?

LIST OF PARTIES TO THIS PROCEEDING

The present petition involves the estate of Mr. Ahad Karabagui (1903-2004), a citizen of Iran. He died intestate in Los Angeles, California, leaving a vast fortune in at least four countries.

Petitioner Sona Gharabagui is a sister of the decedent. Petitioner Homa Rastegar is the niece of the decedent and the daughter of petitioner Sona Gharabagui.

Respondent Soghra Karabagui is the widow of the decedent.

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Mrs. Sona Gharabagui and Mrs. Homa Rastegar respectfully seek review by the Supreme Court of the United States.

INTRODUCTION

California courts applied California law to the estate of a citizen of Iran, finding him to be domiciled in California at the time of his death, even though he was present in the state only as a foreign tourist. Petitioners contend that federal law prohibits such a domicile determination, since a person visiting the United States on a tourist visa cannot form the intention to remain anywhere in this country indefinitely.

Mr. Ahad Karabagui was a citizen and resident of Iran, who acquired great wealth during his long life. He was born in Iran in 1903 and died intestate in Los Angeles, California, in 2004. At the time of his death, Mr. Karabagui and his wife were temporarily staying in the United States on tourist visas. Mr. Karabagui's properties may have had a value of a hundred million dollars or more, and included assets located in Iran, Switzerland, Great Britain, and the United States. Because of Mr. Karabagui's final illness, neither he nor his wife ever returned to Iran. They entered the United States on tourist visas in 2000.

A childless man, Mr. Karabagui was survived by his wife. He was also survived by a sister, Mrs. Sona Gharabagui. Under Iranian law, the two of them are his sole heirs.

Mrs. Karabagui, the widow, Mrs. Gharabagui, the sister, and Mrs. Homa Rastegar, a niece of the decedent and the daughter of Mrs. Gharabagui, filed petitions in the Los Angeles Superior Court concerning the administration of Mr.

Karabagui's estate. After a trial concerning issues of domicile and residency, the court rendered judgment in favor of the widow, recognizing her as the sole heir of her late husband and permitting her to serve as special administrator of his estate. The decedent's sister and her daughter appealed, contending that, at all times, Mr. and Mrs. Karabagui have been domiciled in Iran, making Iranian law applicable, and making the judgment erroneous.

After the California judgment was entered, a court in Iran rendered judgment and issued a certificate of heirship on August 7, 2005. The Iranian court determined that the widow and surviving sister are the sole heirs of Mr. Karabagui. In accordance with Iranian law, the decedent's estate has been divided between the heirs.

Federal law prohibits foreign citizens visiting the United States on tourist visas from establishing domiciles in this country. California conflict of law principles provide that, where a person dies intestate, the law of his domicile governs.

The trial court judgment rested on the factual finding that the decedent was domiciled in California when he died. This judgment was affirmed by a divided California Court of Appeal, and the Supreme Court of California denied review.

California courts have rendered judgment based on a domicile determination that violates federal law, and have refused to recognize the judgment of the Iranian court distributing the estate of Ahad Karabagui in accordance with Iranian law.

CITATIONS OF OPINIONS AND ORDERS

This petition for a writ of certiorari arises from a California probate proceeding, *Estate of Karabagui*, Los Angeles Superior Court case number BP086522. After a court trial, judgment was entered determining that the decedent, Mr. Ahad Karabagui, was domiciled in California at the time of his death; that California community property law and California joint tenancy law are applicable to all property of the decedent; and that respondent Soghra Karabagui, the decedent's widow, is the sole heir to the decedent's estate. The opinion and judgment of the trial judge were not published. (App. B).

From the judgment entered in the Los Angeles Superior Court, petitioners Sona Gharabagui and Homa Rastegar, the decedent's sister and niece, appealed to the Court of Appeal of the State of California, Second Appellate District, *Estate of Karabagui*, Second Civil B183178. In a split decision, the Court of Appeal affirmed. Neither the majority opinion nor the dissenting opinion was published. (App. A).

Petitioners Sona Gharabagui and Homa Rastegar filed a petition for review in the Supreme Court of the State of California, *Estate of Karabagui*, case number S140923. Their petition was denied in an unpublished order. (App. E).

JURISDICTIONAL STATEMENT

Jurisdiction is invoked pursuant to 28 U.S.C. § 1257. The California Court of Appeal, in a split decision, affirmed the judgment of the trial court in an opinion filed December 29, 2005. That court denied rehearing on January 19, 2006. The Supreme Court of California denied review on March 15, 2006, making the decision of the California Court of Appeal final under state law. (App. E).

CONSTITUTIONAL PROVISIONS, TREATIES, STATUTES, AND REGULATIONS INVOLVED

In pertinent part, Article VI of the Constitution, provides that:

> This Constitution, and the Laws of the United States which shall be made and in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and Judges in every state shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

As relevant here, Article I, section 8, of the Constitution provides that:

> The Congress shall have Power . . . To regulate Commerce with foreign Nations, and among the several States, and with the Indian tribes; [and] To establish an [sic] uniform Rule of Naturalization . . .

Petitioners rely on the *Immigration and Nationality Act* (8 U.S.C. § 1101) and the regulations adopted pursuant to the Act (22 *Consolidated Federal Register*, section 41.31(2005)). Pertinent portions of the Act and regulations are cited below.

The appendix includes official translations of the Civil Code of Iran, excerpts from a treaty between Iran and Switzerland, and passages from a 1957 treaty between the United States of America and Iran.

STATEMENT OF THE CASE[1]

1. The Death of Mr. Ahad Karabagui and the Probate Proceedings in California.

Mr. Ahad Karabagui was born in Iran on May 15, 1903, and died in Los Angeles, California, on April 29, 2004. [Appellants' Appendix ("AA") 296.]

A petition for authorization to administer the estate of Mr. Ahad Karabagui was filed on June 25, 2004. [AA 1-5.] The decedent's widow filed objections to the petition. [AA 6-14.] She alleged that she and the decedent were married and were residents of Los Angeles at the time of the decedent's death. [AA 6.] She also contended that, as the surviving spouse, she was entitled to first priority to serve as the administrator of her late husband's estate. [AA 6-7.]

On September 2, 2004, Mrs. Homa Rastegar, the decedent's niece, filed a petition for letters of special administration. [AA 22-27.] In this petition, she alleged that the size of her uncle's estate is "unknown." [AA 23.] Nonetheless, she stated, "petitioner believes there is a bank account in Switzerland

1. The record in the California Court of Appeal consisted of an Appellants' Appendix (three volumes with a total of 575 pages), a Respondent's Appendix (one volume with 17 pages), and a Reporter's Transcript (four volumes with a total of 156 pages). The original record was supplemented by two requests for judicial notice, in the California Court of Appeal and in the California Supreme Court. Certain items that were attached to the requests for judicial notice are included in the appendix to this petition for a writ of certiorari. Such items include the judgment of the Iranian court concerning the estate of Ahad Karabagui, an official translation of certain articles from the Iranian *Civil Code*, excerpts from a treaty between Iran and Switzerland, and excerpts from a treaty between Iran and the United States.

containing an excess of $27,000,000.00." [AA 23.] She also requested appointment of a special administrator, referring to other assets in England, Switzerland, and Iran, making the total value of Mr. Karabagui's estate "in excess of $50,000,000.00." [AA 23.]

On August 25, 2004, Mrs. Soghra Karabagui, the widow, filed her own petition to administer the estate of her late husband, using the same Superior Court case number as her late husband's niece. [AA 15-21.] Objections were filed to this appointment. [AA 19-21.] It was claimed that the widow is "a citizen of Iran and may face deportation at any time," because she is temporarily staying in California on a tourist visa. [AA 19.] The widow filed a response to these objections. [AA 28-34.]

The surviving sister and her daughter soon filed a petition to remove the widow as special administrator of the Karabagui estate. [AA 35-37.] It was alleged that the estate was valued at least at $50,000,000.00, and that the widow was falsely claiming that its assets were in joint tenancy. [AA 35.] The widow filed objections to the petition for her removal. [AA 38-41.]

The trial began on January 31, 2005. [AA 144; Reporter's Transcript ("RT"), page 1-2.] The trial involved determination of issues of domicile, residence, choice of law, jurisdiction, and qualifications to serve as a special administrator in California.

Among the exhibits introduced into evidence was a copy of the death certificate of Mr. Karabagui, which referred to him as a California resident at the time of his death. [AA 296.] It identified the causes of death as "chronic obstructive pulmonary disease," "congestive heart failure," and "diabetes," beginning January 1, 2002 and continuing to the time of death. [AA 296.]

At the conclusion of evidence, the matter was taken under submission, subject to post trial briefing.

2. The Contentions of the Parties in the Probate Court.

On March 2, 2005, the two sides filed simultaneous post trial briefs, setting forth their respective contentions. [AA 59-96.] The decedent's sister and niece contended that the decedent's widow, as an Iranian citizen, could not invoke the quasi-community property law of California. They also argued that the widow is not qualified to be the general administrator of her husband's estate since she is not a resident of the United States. [AA 59-64.]

The decedent's sister and niece, the present petitioners, invoked the *Immigration and Nationality Act* of the United States (8 U.S.C. § 1101). [AA 62.] They argued that, pursuant to the Act, the decedent could not have been domiciled in the United States, because a person visiting the United States temporarily on a tourist visa cannot form the intention of remaining in the country indefinitely. [AA 62.] Thus, the decedent's sister and niece invoked federal law at the first opportunity. (*See* rule 14(1)(g)(i) of the *Rules of the Supreme Court of the United States*.)

The decedent's widow argued that she is entitled to serve as administrator, as a resident of California. [AA 66-96.] She contended that, under conflict of law principles, the estate should be governed by the law of the decedent's last domicile.[2] [AA 66-96.] She further contended that Los Angeles was the domicile of Mr. Karabagui as of the time of his death. [AA 66-96.]

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2. Presumably, the widow Karabagui would still agree that if it is determined that her husband was domiciled in Iran, his assets must be distributed according to the law of that country.

Two weeks after the initial post trial briefing, simultaneous reply briefs were filed on March 16, 2005. [AA 97-117.]

The decedent's sister and niece argued that Mr. Karabagui's domicile was Iran and not California. [AA 97-107.] They further argued that their adversary is not qualified to serve as administrator. [AA 97-107.]

Mrs. Karabagui, the widow, reiterated her position that she is a resident of California. [AA 108-117.] She claimed that she is qualified to serve as administrator, and that California law governs the distribution of her husband's estate. [AA 108-117.]

3. The Evidence at Trial Relating to Domicile Determination.

Mrs. Soghra Karabagui, the decedent's widow, testified on her own behalf. [RT 64-79.] She testified that she was born in 1922 and that her address was a condominium, Unit 1201 of the building at 10350 Wilshire Boulevard, in Westwood, a district of Los Angeles. [RT 66.] She and her husband were married for 63 years, until his death on April 29, 2004. [RT 66.] The Karabaguis bought the Westwood condominium "about 20 years ago," when they were "traveling back and forth," presumably going to Iran, Great Britain, and the United States. [RT 66.] She claimed that she owned "a flat in London" in which her husband had no ownership interest. [RT 66-67.]

Mrs. Karabagui, the decedent's widow, entered the United States on June 7, 2000 on a tourist visa and has remained continuously in this country since that time.

[RT 68.] She has not left the country "because my husband wasn't well." [RT 68.]

Mrs. Karabagui always traveled with her husband. [RT 69.] She had no children. [RT 69.] The decedent's widow claimed that, in June of 2000, she and her husband had "discussions together" about making California their home. [RT 69.] They decided to make California their "permanent home" because "my family's out here," because "I was lonely in London," and because "I love to stay here." [RT 69.] Another factor was that her husband "became ill." [RT 69.] The illness began in 2001. [RT 70.] Her husband's doctors were in Los Angeles. [RT 70.]

Mrs. Karabagui testified that she intends to remain in the United States. [RT 72-73.] The reason is that "my relations are here, my sisters." [RT 73.] She also said that "I don't want to go back [to Iran] because I have nobody there." [RT 73.] "I'm alone there." [RT 73.]

Mrs. Karabagui acknowledged that she is present in the United States on a "tourist visa." [RT 73.] She intends to apply for "permanent residence." [RT 73.]

On cross-examination, the decedent's widow was asked "Did Mr. Karabagui consider himself a resident of California?" [RT 78.] The witness's answer was "no." Rather, Mr. Karabagui stayed in California "because he became ill." [RT 78.]

In evidence were copies of the passports of Mr. and Mrs. Karabagui. [AA 303-336.] They identified the passport holders as citizens of Iran with B-2 visas who had not left the United States after their arrival in June of 2000. [AA 303-336.]

The decedent's passport identifies Mr. Karabagui's "residence" as "Iran." [AA 306.] The widow's passport similarly identifies her "residence" as "Iran." [AA 320.] Her passport has now been extended to November 26, 2007. [AA 319.]

4. The Judgment of the Trial Court.

The trial court rendered judgment on April 15, 2005. (App. C).

The court determined that "[t]he last domicile of Ahad Karabagui was California." [AA 120.] Therefore, the court concluded, California law, including quasi-community property law, governed the estate. [AA 120.]

The court further found that the surviving widow, Soghra Karabagui, "has satisfied the requirements of residency in Los Angeles, California." [AA 119.] Therefore, she is not disqualified to serve as administrator of her late husband's estate. [AA 119.] The court also ruled, that under California law, the documents establishing the Swiss bank accounts create joint tenancy accounts with the right of survivorship. [AA 120-121.][3]

The judgment recites that counsel for the widow Karabagui was directed to prepare a proposed judgment. [Appellant's Appendix ("AA"), page 118.] The judgment

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3. Although paragraph 10 purports to be a binding interpretation of the legal effect of Swiss bank documents, this interpretation is based on the assumption that the determination of California domicile was correct. Otherwise, California Probate Code section 5302, which is cited in paragraph 10, would be inapplicable.

submitted was, of course, signed by the court. It included paragraph 10, which is as follows:

> As a separate ground for the Court's ruling, the documents governing the Swiss bank account, including account applications and agreements signed by Ahad and Soghra Karabagui, and the banks' written terms, establish that the Swiss bank accounts were joint tenancy accounts with rights of survivorship in the surviving account-holder (Exhibits 6, 7, 8, 9, 10 & 11). The Swiss bank accounts passed automatically to Soghra Karabagui upon her husband's death, as provided in Cal. Probate Code section 5302.

[AA 120-121.]

The judgment of the trial court was entered on April 15, 2005. [AA 118.]

5. The Appeal.

From the judgment in favor of the surviving widow, Mrs. Soghra Karabagui, the decedent's sister, Mrs. Sona Gharabagui, and the decedent's niece, Mrs. Homa Rastegar, appealed. [AA 124-127.] The notice of appeal was filed on May 11, 2005. [AA 124.]

6. The Iranian Judgment and the Petitioners' Request for Judicial Notice in the California Court of Appeal.

After the judgment of the trial court in California, a court in Iran rendered judgment on August 7, 2005, disposing of all of the assets of Ahad Karabagui, whether located in Iran or elsewhere. (App. F). The court determined that the sole

heirs under Iranian law are the decedent's widow and his sister. The sister is entitled to approximately three fourths of the decedent's estate. The widow is entitled to the remainder. The Iranian court issued a certificate of heirship.

On or about November 14, 2005, the decedent's sister and niece filed a request for judicial notice of various documents. These documents included the judgment of an Iranian court with respect to the estate of Mr. Ahad Karabagui (including an official Iranian government translation done September 17, 2005), an official translation of certain articles of the Iranian *Civil Code* involving inheritance in cases of Iranian citizens, a certified translation of an article from the a treaty between Iran and the Swiss Confederation, a copy of a 1957 treaty between the United States and Iran, and copies of documents indicating that the 1957 treaty is still in effect.[4]

The request for judicial notice was supported by a declaration of one of the attorneys for the appellants, who described how he obtained the documents in question. He noted that he had received electronic copies of the documents from Iran and had submitted copies of these to the court and opposing counsel, and had submitted the request for judicial notice after certified copies produced in Iran had arrived. The Iranian judgment was not rendered until August 7, 2005, four months after the judgment in Los Angeles.

The widow Karabagui opposed the request for judicial notice, claiming that it was illegal to import documents from Iran, such as judgments of Iranian courts, and to utilize the services of government translators in Iran.

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4. Excerpts from the treaty are included in Appendix H.

The California Court of Appeal denied the request for judicial notice on November 16, 2005. (App. B).

7. The Majority Opinion in the California Court of Appeal.

In a cryptic seven page opinion, the majority of the Court of Appeal affirmed the judgment of the trial court. (App. A). Surprisingly, the majority did not even address the issue of whether the domicile determination made by the trial court was correct, stating that "[w]e disagree [that] a finding Mr. Karabagui was domiciled in California was essential to the trial court's decision." This conclusion was not explained (and is contrary to the record). Instead, after skipping over the primary ground for the appeal, the majority affirmed on the basis of the purported separate ground for the judgment, involving interpretation of the language of Swiss banking documents.

The rationale of the majority opinion can be found in a few sentences. It is asserted that the "[p]etitioners agreed in their post trial brief filed March 2, 2005 that California law controlled." It is also asserted that "the trial court also concluded, as a *separate and independent* basis for the orders in favor of Ms. Karabagui, that the bank accounts were held in joint tenancy." (Emphasis added.) It is claimed that "[p]etitioners have not challenged the joint tenancy determination," and "have not argued the joint tenancy finding based on bank account documents, was dependent on Mr. Karabagui's domicile." Hence, the majority concludes, "any argument with respect to the joint tenancy finding has been forfeited." As a result of these assertions, the court affirmed the judgment on the supposedly separate and independent ground involving interpretation of bank documents.

Although the majority does not set forth its reasoning, it has apparently concluded that, simply because Probate Code section 5302 is part of California law, it is applicable to the Swiss bank accounts, regardless of the facts and other provisions of state law. Swiss law and Iranian law are ignored. The same is true with respect to California jurisdictional law and California choice of law rules.

As noted by the Court of Appeal, the petitioners' post trial brief filed March 2, 2005 includes a single sentence indicating that "[t]he law of California is applicable." [AA 61.] However, this sentence must be considered in the context of the post trial brief as a whole, and in the context of the facts of the case. Another portion of the very same brief urged that "[t]he law of Switzerland is applicable to the nature of the accounts maintained in Swiss Banks." [AA 59.]

The phrase "California law" refers to more than California Probate Code section 5302. It includes items such as jurisdiction, choice of law, and federal law that is binding within the state. Contrary to what is asserted in the majority opinion, the appellants challenged the supposedly "separate" ground of the trial court's judgment, involving a finding of the existence of a joint tenancy under California law, in both their appellants' opening brief and in their appellants' reply brief. It was argued that "[t]he court's judgment is *entirely dependent*" upon the determination of domicile. (Emphasis added.) [AOB, page 12.] It was further argued that the decedent was domiciled in Iran at the time of his death as a matter of law. [AOB, pages 12-19.] It was claimed that "the law of Iran should govern the devolution of all of his [the decedent's] personal property, including Swiss bank accounts," because of California choice of law rules and the

absence of any California jurisdiction over any property located outside of the state. [AOB, pages 19-20.] Thus, as the dissenter observed, the appellants "did not forfeit their challenge to the trial court's alternative conclusion" with respect to joint tenancy.

8. The Dissenting Opinion in the California Court of Appeal.

Justice Richard M. Mosk filed a dissenting and concurring opinion. (App. A). He agreed with the primary contention of the decedent's sister and niece, that Mr. Ahad Karabagui was domiciled at all times in Iran. Justice Mosk also found that the appellants "contended in their opening brief that because decedent was not domiciled in California and was domiciled in Iran, Iranian law should govern as to the devolution of the Swiss bank accounts." Thus, he concluded, the appellants had challenged both grounds of the trial court's judgment.

9. The Denial of Rehearing by the California Court of Appeal.

The California Court of Appeal denied rehearing on January 19, 2006. (App. D).

10. The Denial of Review by the Supreme Court of California.

On February 7, 2006, the decedent's sister and niece filed a petition for review in the Supreme Court of California, seeking to overturn the decision of the Court of Appeal, *Estate of Karabagui*, California Supreme Court case number S140923. This petition was denied on March 15, 2006. (App. E).

LEGAL ARGUMENT

I.

A Person Visiting the United States on a Temporary Tourist Visa Is Legally Incapable, as a Matter of Federal Law, of Forming the Intention to Remain in This Country Indefinitely.

The record shows that, at all times, Mr. Ahad Karabagui was an alien, a citizen of Iran. As a result, the question of whether he was ever domiciled in Los Angeles is governed by federal law.

In *Toll v. Moreno*, 458 U.S. 1 (1982), this Court considered a case involving several individuals who were students at the University of Maryland. Each of them was a child of a nonimmigrant alien holding a "G-4" visa, a type of visa issued to nonimmigrant aliens who are officers or employees of particular international organizations or who are members of their immediate families. 458 U.S. at 4. Prior to the decision of the Supreme Court, the state operated University of Maryland had a policy preventing holders of G-4 visas from obtaining the treatment for purposes of tuition and fees afforded to students with "in state" status. 458 U.S. at 3-4.

The Supreme Court in *Toll* overturned the policy of the University of Maryland discriminating against students holding G-4 visas. It held that federal authority to regulate the status of aliens is derived from the federal government's constitutional powers to establish uniform rules of naturalization and to regulate commerce with foreign nations. The Court noted that, in the *Immigration and Nationality*

Act, Congress had chosen not to bar G-4 aliens from acquiring domicile in the United States. Therefore, such aliens could be domiciled in Maryland and could obtain the benefits of such a domicile, as afforded by various treaties, international agreements, and federal statutes. Hence, the policy of the University of Maryland with respect to students holding G-4 visas was invalid, under the Supremacy Clause of the Constitution of the United States.

The *Toll* case establishes that issues relating to domicile within the United States of aliens must be determined in a manner consistent with federal law. Unlike the individuals in the *Toll* case who held G-4 visas, Mr. and Mrs. Karabagui entered the country on tourist visas.

The trial court determined that Mr. Ahad Karabagui was domiciled in California at the time of this death, and that his widow is a Los Angeles resident. The court's judgment is entirely dependent upon these determinations. It is therefore appropriate to consider the legal definitions of "domicile" and "residence."

In *Black's Law Dictionary*, Seventh Edition (West Group, St. Paul, Minnesota, 1999), there are two definitions of "domicile." The primary definition is "[t]he place at which a person is physically present and that which the person regards as home; a person's true, fixed, principal, and permanent home to which that person intends to return and remain even though currently residing elsewhere." (Page 501.) The other definition is simply "[t]he residence of a person or corporation for legal purposes." (Page 501.)

Black's Law Dictionary has four definitions of "residence." (Page 1310.) These include "[t]he act or fact of

living in a given place for some time" and "[t]he place where one actually lives as distinguished from a domicile." (Page 1310.) By way of explanation, the definition of "residence" in *Black's Law Dictionary* includes the comment that "*residence* usually means bodily presence as an inhabitant in a given place" while "*domicile* usually requires bodily presence plus an intention to make the place one's home." (Emphasis added.) (Page 1310.) Although the two terms are sometimes used synonymously, "[a] person . . . may have more than one residence at a time but only one domicile." (Page 1310.)

Applying the above definitions to a particular set of facts is sometimes a difficult task. It is clear that "domicile" and "residence" depend partly on a person's intentions at a particular point in time, but the case law makes it clear that the person's actions must also be considered as well as legal constraints on a person's conduct.

In *Mitchell v. United States*, 88 U.S. 350 (1874), this Court adopted a definition of "domicile" as a "residence at a particular place accompanied with positive or presumptive proof of an intention to remain there for an unlimited time." 88 U.S. at 352. It is the place where a person lives and has his home, until the evidence establishes to the contrary. 88 U.S. at 352. "Mere absence from a fixed home, however long continued, cannot work the change [of domicile]." 88 U.S. at 353.

In the *Mitchell* case, the claimant was a resident of Louisville, Kentucky, who had been domiciled there for a long time. He secured permission from proper military authorities of the United States in Kentucky to go through army lines into territory that was in rebellion. Because of

the rebellion, he was unable to return to Louisville until the Union Army reached Savannah, Georgia. Since there was no evidence that Mr. Mitchell intended to remain permanently in the Confederacy, it was held that, as a matter of law, he was at all times domiciled in Louisville, Kentucky. Once a person is domiciled at a particular place, that place remains his domicile until he acquires a new one. 88 U.S. at 353.

In *Estate of Glassford*, 114 Cal. App. 2d 181, 186, 249 P.2d 908, 911 (1952), the California Court of Appeal observed that "domicile has a continuing quality because a person always has a domicile and does not lose one until another is acquired." The decedent in this case was domiciled in New York but traveled west thinking that she would remain in the west for a year. 114 Cal. App. 2d at 183-184, 249 P.2d at 909, 910. While living in Los Angeles, she fell ill and was unable to return to New York. The Court of Appeal upheld the determination that the decedent was, at all times, domiciled in New York. The court reasoned as follows:

> Under these circumstances the trial court could reasonably conclude that decedent's determination to remain here until she died was not a free choice on her part but compelled by circumstances over which she had no control; that her stay in California was not for an indefinite period, being originally limited to one year, and later, when advised of her mortal illness, limited by an expected event (her death) which although uncertain in time was controlled by existing facts of which she had knowledge. [Citation.] It is apparent that her stay was dictated by expediency, for a temporary and limited purpose, and with no thought, purpose or intent of establishing a home here. . . .

> From all the facts, the trial court could reasonably draw the inference that the decedent never intended to change her domicile to California, hence she was domiciled in New York at the time of her death." 114 Cal. App. 2d at 187-188, 249 P.2d at 912.

Like the decedent in the *Glassford* case, Mr. Karabagui fell ill while visiting Los Angeles. He was unable to return to his native Iran, which was his domicile. Since he never acquired a new domicile, he remained domiciled in Iran.

Under California law, as shown by the *Glassford* case, the jurisdiction of California courts to administer the assets of persons domiciled outside of the state at the time of death is limited. In particular, California jurisdiction is limited to administering assets located in California for the benefit of local creditors. 114 Cal. App. 2d at 190, 249 P.2d at 913. The inheritance of all other assets, and all assets located outside the state, is governed by the law of the decedent's domicile. Because domicile determination depends on the intentions of a person, it necessarily is a question of federal law, in the case of a person temporarily present in the United States on a tourist visa.

II.

Since Domicile Determination Depends on a Person's Intention to Remain at a Particular Place Indefinitely, Federal Law Prohibits Any State From Finding That a Citizen of a Foreign Country Visiting the United States on a Temporary Tourist Visa Is Domiciled in That State, Even Where Rights and Obligations Arising Under State Law Are Involved.

In federal law, the term "alien" is defined as "any person not a citizen or national of the United States." 8 U.S.C. § 1101(a)(3). Under this definition, the decedent was an alien. His wife is also an alien.

Mr. and Mrs. Karabagui were allowed to enter the United States as nonimmigrant aliens, as defined in 8 U.S.C. § 1101(a)(15)(b). Such a person, according to this statute, is "an alien (other than one coming for the purpose of study or of performing skilled or unskilled labor or as a representative of foreign press, radio, film, or other foreign information media coming to engage in such vocation) having a residence in a foreign country which he has *no intention of abandoning* and who is visiting the United States *temporarily* for business or *temporarily* for pleasure." (Emphasis added.) If a visitor falls into this statutory definition, he or she may be given a business (B-1) or pleasure (B-2) visa. *Code of Federal Regulations*, Title 22, Part 41. Section 41.31(b)(2) provides that the term "pleasure" as used in the *Immigration and Nationality Act* "refers to legitimate activities of a recreational character, including tourism, amusement, visits with friends or relatives, rest, medical treatment, and activities of a fraternal, social, or service nature." In this case,

the record shows that Mr. Karabagui and his wife each entered the United States on a B-2 tourist visa.

In *Castillo-Felix v. Immigration and Naturalization Service*, 601 F.2d 459, 464 (9th Cir. 1979), overruled on other grounds by *Chevron, U.S.A. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 844 (1996), the court held that if aliens are in the United States for a temporary purpose, they cannot establish domicile, because if they intend to stay, they violate the terms of their admission and are no longer present in this country lawfully. In fact, in order to be entitled to discretionary relief from deportation, an alien must accumulate seven years of lawful unrelinquished domicile *after* admission to permanent residence. 601 F.2d at 466.

A foreign tourist cannot legally formulate the intent to make the United States his family's permanent place of residence so as to qualify for a homestead exemption under state law, even if the foreign tourist owns a house in this country. *Cooke v. Uransky*, 683 F.2d 130, 131 (1982). Even if a person eventually becomes a permanent resident of the United States after entering on a B-2 tourist visa, the person's lawful domicile is deemed to commence when permanent residence tatus is granted rather than when the person entered on the tourist visa. *Melian v. Immigration and Naturalization Service*, 987 F.2d 1521, 1524 (11th Cir. 1993). A person cannot, consistent with federal law, form an intention to establish a domicile in the United States when that person is present only on a temporary basis. *Graham v. Immigration and Naturalization Service*, 998 F.2d 194, 196 (3d Cir. 1993).

The reported decision that most clearly establishes that neither Mr. Ahad Karabagui nor his wife has ever been

domiciled in the United States is *Gaudin v. Remis*, 379 F.3d 631 (9th Cir. 2004). This case involved an international child custody dispute, which was ultimately decided on the basis of the "federal common law of domicile." 379 F.3d at 633.

Ms. Catherine Gaudin and Mr. John Remis, Jr., lived as a couple in Hawaii for four years, during which time two sons were born to them. 379 F.3d at 633. Thereafter, their relationship ended, and Ms. Gaudin moved to Quebec, Canada, with the two children, after obtaining family court judgments in Hawaii giving her "sole custody of the children, subject to visitation rights" of Mr. Remis. 379 F.3d at 633. Later, the father of the children obtained temporary custody of them from the Hawaii Family Court, while Ms. Gaudin was in Quebec. Ms. Gaudin thereafter filed a motion in the Quebec Superior Court claiming that Mr. Remis's retention of the children was wrongful under the Hague Convention, and filed a petition under the Hague Convention in federal court in Hawaii, seeking return of the children. Finally, Ms. Gaudin closed her bank accounts in Canada and moved to Hawaii. She married a lawyer, a partner in a Honolulu law firm, and lived with him in Hawaii at the time of the decision of the Ninth Circuit. 379 F.3d at 635.

In *Gaudin*, the Ninth Circuit ruled that a person's domicile is the permanent home of that person; that a person residing in a state is not necessarily domiciled there; that a person may have only one domicile at a time; and that a person visiting the United States under a temporary visa cannot, as a matter of law, have the permanent intent to establish a domicile in Hawaii rather than the person's native country. Therefore, the Ninth Circuit ruled Ms. Gaudin could not maintain her action in Hawaii federal court under the Hague Convention. 379 F.3d at 638.

Subjective intentions, even when coupled with physical presence in the United States, cannot establish domicile in this country, as a matter of federal law. The requisite intent must be consistent with federal law, and a person entering the United States on a tourist visa is legally incapable of forming the intent necessary to establish a domicile in this country.

Under the applicable federal statutes and regulations, and under the *Castillo-Felix*, *Cooke*, *Melian*, *Graham*, and *Gaudin* cases, it must be held that Mr. Ahad Karabagui was never domiciled in the United States. Whatever his subjective state of mind, federal law precluded him from establishing a domicile in Los Angeles.

Since Mr. Karabagui was not domiciled in Los Angeles, or anywhere else in California or any other state, California courts never had jurisdiction to determine the inheritance of his property. The decedent was domiciled in Iran, and Iranian law must control.

III.

At the Time of His Death, Mr. Ahad Karabagui Was Domiciled in Iran, His Native Country, as a Matter of Law.

Whatever a person's subjective intent with respect to residence in California, such intent cannot overcome or be inconsistent with federal law. *Carlson v. Reed*, 249 F.3d 876, 878-879 (2001).

It is undisputed that Mr. Ahad Karabagui was a citizen and resident of Iran, as shown by his passport and his visas. It is undisputed that he entered the United States on a tourist visa, and his stay was extended until the date of his death because of his failing health.

As demonstrated above, under both federal law and California law, a person may not change his domicile until he has acquired a new domicile. A person cannot acquire a new domicile unless that person has, consistent with legal obligations, formed the intention to remain at a particular place indefinitely. In this case, Mr. Ahad Karabagui could not have legally formed any such intention.

The widow Karabagui gave somewhat equivocal testimony concerning her late husband's state of mind. However, as a matter of law, any subjective intention to remain in California on the part of Mr. Ahad Karabagui could not have resulted in a change in domicile. Under the undisputed facts, it was legally impossible for Mr. Karabagui to be domiciled in California.

IV.

Since the Decedent Was Domiciled in Iran When He Passed Away, California Courts Never Had Any Jurisdiction to Apply the State's Probate Law, Community Property Law, and Joint Tenancy Law, to Assets Located Outside of the Borders of the State.

Since the decedent was domiciled in Iran, as a matter of law, it was improper for California courts to apply California law. California was required to respect the law of Iran, even as a matter of California law. They were certainly obligated to do so by federal law.

"The devolution of interests in movables upon intestacy is determined by the law that would be applied by the courts of the state where the decedent was domiciled at the time of

his death." *Restatement (Second) of Conflict of Laws*, section 260 (2005). Since Mr. Ahad Karabagui was domiciled in Iran, the law of Iran should govern the devolution of all of his personal property, including Swiss bank accounts.

Section 946 of the Civil Code of California provides that "[i]f there is no law to the contrary, in the place where personal property is situated, it is deemed to follow the person of its owner, and is governed by the law of his domicile." As noted above, Mr. Karabagui's domicile was Iran.

California Civil Code section 946 embodies the common law rule that the domicile of an intestate at his death governs succession to his personal property. *Nolan v. Robison*, 135 Cal. App. 2d 16, 20, 286 P.2d 899, 901-902 (1955). This rule is recognized in many other cases, including *Perkins v. Perkins*, 21 Cal. 2d 561, 568-569, 134 P.2d 231, 235-236 (1943), and *Burnison v. Katz*, 33 Cal. 2d 638, 640, 204 P.2d 330, 331 (1949).

The right of the California Legislature to control the disposition of the estates of deceased nonresidents is limited to property located within the state. *In the matter of the Estate of Edwin C. Layton*, 217 Cal. 451, 465, 19 P.2d 793, 799 (1933). When the executor of a nonresident's estate takes possession of intangible property, such action does not operate to convert the property into part of a California estate. 217 Cal. at 464-465, 19 P.2d at 798-799.

Marital interests in movable property acquired during marriage are governed by the law of the parties' domicile at the time of acquisition. *Rozan v. Rozan*, 49 Cal. 2d 322, 326, 317 P.2d 11, 13 (1957). The interests of spouses in movable property do not change, even where the movables are taken

into another state or are used to purchase land in another state. 49 Cal. 2d at 326, 317 P.2d at 13. *See also Schecter v. Superior Court*, 49 Cal. 2d 3, 10-11, 314 P.2d 10, 14 (1957), and *Darnold v. Voges*, 143 Cal. App. 2d 230, 251, 300 P.2d 255, 268 (1956).

The above authorities establish that Iranian law governs the distribution of all of the decedent's property, even property in California acquired through funds brought into the state from elsewhere. The only possible property to which California law may apply is property acquired by Mr. Karabagui while living in California without the use of any funds from abroad. *Estate of Glassford*, 114 Cal. App. 2d 181, 190, 249 P.2d 908, 913 (1952). All other property, including any California assets that may have been purchased using funds from outside the state, must be distributed in accordance with the Iranian judgment.

When Mr. Ahad Karabagui last entered the United States, he was 97 years old. There is nothing in the record to suggest that he was employed in California and had earned income. Under federal law, he could not have intended to remain in the state unindefinitely. He was not domiciled in California. He was not a bona fide resident of the state.

California courts should have followed Iranian law, with respect to the inheritance of the property of an Iranian citizen who was domiciled in Iran. Their failure to do so is not consistent with federal law.

V.

The Refusal of California Courts to Recognize and Enforce the Probate Court Judgment in Iran Violates Federal Law.

A "Treaty of Amity, Economic Relations, and Consular Rights" between the United States of America and Iran went into effect on June 16, 1957. The treaty, of course, has the force of law in the United States. The fact that both the government of the United States and the government of Iran acknowledge that the treaty is still in effect cannot be disputed. Both governments are continuing to litigate their rights under the treaty at the International Court of Justice located in the Hague, a city in the Netherlands. Paragraph 2 of Article III of the treaty provides that

> nationals and companies of either high contracting party shall have freedom of access to the courts of justice and administrative agencies within the territories of the other high contracting party, in all degrees of jurisdiction, both in defense and pursuit of their rights, to the end that prompt and impartial justice be done.

This international inheritance dispute, involving the estate of an intestate Iranian, should be determined according to the decedent's domicile. As a matter of federal law, that domicile was Iran. California courts have refused to recognize the probate court judgment in Iran, effectively denying access to the courts of the United States with respect to rights arising under Iranian law.

VI.

The Judgments of California Courts in This Case Violate International Treaties and Infringe the Sovereignty of Iran, Switzerland, and Great Britain.

In *Ministry of Defense and Support for Armed Forces of Islamic Republic of Iran v. Cubic Defense Systems, Inc.*, 385 F.3d 1206 (9th Cir. 2004), the court decided an appeal on technical and procedural grounds, even though the litigation involved complex issues of sovereign immunity. This Court found the case important enough to warrant a writ of certiorari. The decision of the Ninth Circuit has now been reversed. *Ministry of Defense and Support for Armed Forces of the Islamic Republic of Iran v. Elahi*, 126 S. Ct. 1193 (2006), case number 04-1095. Like the present case, the *Ministry of Defense* litigation has international implications.

In modern times of globalization, tourists cross international frontiers every day. It is increasingly common for a person to own property in more than one country. Undoubtedly, tourists will sometimes pass away while abroad. The law governing international inheritance disputes needs to be addressed and clarified.

When persons born abroad come to the United States, they are required to comply with laws governing immigration, naturalization, and tourism. A tourist is not a domiciliary.

It is an infringement of the sovereignty of foreign countries, as well as a violation of federal law, for a state court to apply state law to the estate of a foreign citizen,

who is a temporary sojourner in the United States with no intention of remaining in the country, except for a limited time. Iranian law, not California law, should govern the inheritance of a wealthy Iranian citizen, who acquired his vast fortune in Iran. At the time of his death, he owned assets in Iran, Switzerland, Great Britain, and various parts of the Untied States. California courts should not interfere with the inheritance of such property, according to the law of the decedent's native country.

In essence, California courts have treated Mr. Ahad Karabagui and his widow as if they were citizens of the United States and residents of California. They have purported to distribute all of the decedent's property, which was acquired over a lifetime in Iran, even though the decedent was never domiciled in California.

As a matter of federal law, a temporary foreign tourist visiting the United States of America cannot be domiciled in this country. In holding to the contrary, California courts have flouted federal law, in violation of the Supremacy Clause of the Constitution of the United States. State courts must not violate controlling federal law, especially where the status of an alien is the controlling issue. As a matter of law, a foreign tourist temporarily visiting the United States cannot be domiciled in this country.

CONCLUSION

For all of the foregoing reasons, the petitioners respectfully request that the Supreme Court of the United States grant this petition and review this matter. The case of the intestate Iranian is governed by Iranian law.

Respectfully submitted,

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APPENDIX

APPENDIX A —OPINION OF THE COURT OF APPEAL OF THE STATE OF CALIFORNIA, SECOND APPELLATE DISTRICT, DIVISION FIVE DATED AND FILED DECEMBER 29, 2005

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA, SECOND APPELLATE DISTRICT DIVISION FIVE

No. B183178

(Los Angeles County Super. Ct. No. BP086522)

Dec. 29, 2005

Estate of AHAD KARABAGUI, Deceased.

SONA HADJIAN GHARABAGHI et al.,

Petitioners and Appellants,

v.

SOGHRA KARABAGUI, as Administrator, etc.,

Objector and Respondent.

APPEAL from orders of the Superior Court of Los Angeles County, Stuart M. Rice, Temporary Judge. Affirmed.

Appendix A

I. INTRODUCTION

Ahad Karabagui, an Iranian citizen, died intestate in Los Angeles on April 29, 2004. This appeal arises out of subsequent probate proceedings. Petitioners Sona Hadjian Gharabaghi, the decedent's sister, and Homa Fallah Rastegar, his niece, appeal from orders in favor of Soghra Karabagui, his widow. The trial court concluded Ms. Karabagui was qualified and entitled to priority to serve as administrator of her deceased husband's estate, and property consisting of money in Swiss bank accounts passed to her upon his death. We affirm the orders.

II. BACKGROUND

Ms. Gharabaghi, the decedent's sister, nominated Ms. Rastegar as administrator of the decedent's estate. Ms. Rastegar filed a petition for administration. The decedent's widow, Ms. Karabagui, also filed a petition to administer the estate. Ms. Karabagui declared under penalty of perjury: she was a resident of Los Angeles County at the time her husband died, as was the decedent; they had lived in California full time since 2001; she was in the United States legally and did not face deportation; and all of the decedent's bank, brokerage account, and real estate assets were held in joint tenancy, passed to her upon death, and were not subject to probate. Ms. Karabagui was appointed special administrator of the estate. Petitioners filed a petition to remove Ms. Karabagui as the special administrator.

Appendix A

A non-jury trial was held. Two issues were submitted by the parties for decision. The first issue was whether Ms. Karabagui was entitled to serve as administrator of her husband's estate. The second issue involved the proper distribution of the Swiss bank accounts—two joint accounts at HSBC Private Bank (Suisse) S.A. and a J.P. Morgan (Suisse) S.A. account. The bank accounts were the only assets put in issue at trial.

As to the first issue, the trial court found: it was undisputed Ms. Karabagui was the surviving spouse of the decedent and they had been married for 63 years; these undisputed facts alone gave Ms. Karabagui priority to serve as administrator under Probate Code[1] sections 8461[2] and 8462[3]; there was no evidence of malfeasance, wrongdoing or fraud committed by Ms. Karabagui; and Ms. Karabagui had satisfied the statutory United States residency requirement.

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1. All future statutory references are to the Probate Code except where otherwise noted.

2. Section 8461 states: "Subject to the provisions of this article, a person in the following relation to the decedent is entitled to appointment as administrator in the following order of priority: [¶] (a) Surviving spouse or domestic partner as defined in Section 37."

3. Section 8462 provides: "The surviving spouse or domestic partner of the decedent, a relative of the decedent, or a relative of a predeceased spouse or domestic partner of the decedent, has priority under Section 8461 only if one of the following conditions is satisfied: [¶] (a) The surviving spouse, domestic partner, or relative (Cont'd)

With respect to the bank accounts, the trial court concluded: under the contracts governing the accounts and the laws of Switzerland, the applicable law was that of the decedent's last domicile; the decedent's last domicile was California; therefore, California law applied; under California law, the bank accounts were quasi community property; under section 6401, subdivisions (a) and (b),[4] that property would be distributed to Ms. Karabagui—one-half as the surviving spouse and the other half passing from the decedent to his surviving spouse without probate.[5] (§ 13500.) The trial court further found, as a separate and independent ground, that the bank accounts were held in joint tenancy with rights of survivorship. The joint tenancy finding arose from documents governing the bank accounts, including account applications

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(Cont'd)
is entitled to succeed to all or part of the estate. [¶] (b) The surviving spouse, domestic partner, or relative either takes under the will of, or is entitled to succeed to all or part of the estate of, another deceased person who is entitled to succeed to all or part of the estate of the decedent."

4. Section 6401 states in pertinent part: "(a) As to community property, the intestate share of the surviving spouse is the one-half of the community property that belongs to the decedent under Section 100.[¶] (b) As to quasi-community property, the intestate share of the surviving spouse is the one-half of the quasi-community property that belongs to the decedent under Section 101."

5. Pursuant to section 13500, "Except as provided in this chapter, when a husband or wife dies intestate leaving property that passes to the surviving spouse under Section 6401 ... the property passes to the survivor subject to the provisions of Chapter 2 (commencing with Section 13540) and Chapter 3 (commencing with Section 13550), and no administration is necessary."

and agreements signed by the Karabaguis, and the institutions' written terms and conditions. The trial court further ruled the joint tenancy bank accounts passed automatically to Ms. Karabagui upon her husband's death; in other words, funds in the joint tenancy bank accounts were not subject to probate. Petitioners agreed in their post trial brief that California law controlled.

III. DISCUSSION

Petitioners contend: the trial court's conclusion as to the disposition of the Swiss bank accounts was entirely dependent upon its finding the decedent was domiciled in California when he died; however, the facts and law preclude any such finding; therefore, California law does not control the disposition of the bank accounts. We disagree a finding that Mr. Karabagui was domiciled in California was essential to the trial court's decision. The trial court considered Mr. Karabagui's domicile in determining what law governed the disposition of the bank accounts. However, the trial court also concluded, as a separate and independent basis for the orders in favor of Ms. Karabagui, that the bank accounts were held in joint tenancy. Petitioners have not challenged the joint tenancy determination. Petitioners have not argued the joint tenancy finding, based on bank account documents, was dependent on Mr. Karabagui's domicile. As a result any argument with respect to the joint tenancy finding has been forfeited. (*Dieckmeyer v. Redevelopment Agency of City of Huntington Beach* (2005) 127 Cal.App.4th 248, 260; see *Tiernan v. Trustees of Cal. State University & Colleges* (1982) 33 Cal.3d 211, 216, fn. 4; *Reichardt v. Hoffman* (1997) 52

Cal.App.4th 754, 763-766.) Therefore, we uphold the trial court's disposition of the bank accounts on the unchallenged joint tenancy ground. We agree with Ms. Karabagui that we need not therefore consider the trial court's finding as to Mr. Karabagui's domicile. (*Gionfriddo v. Major League Baseball* (2001) 94 Cal.App .4th 400, 415, fn. 12; *Filipino Accountants' Assn. v. State Bd. of Accountancy* (1984) 155 Cal.App.3d 1023, 1029-1030.)

Petitioners also argue: we should disregard the testimony of Ms. Karabagui's attorney, Lawrence Heller; Mr. Heller's testimony was not competent evidence of the decedent's domicile; and this was because Mr. Heller was never qualified to testify on the subject and there was no showing of personal knowledge. As is discussed above, we need not consider the question of Mr. Karabagui's domicile. In any event, there was no objection to Mr. Heller's testimony at trial. As a result, the argument has been forfeited. (Evid.Code, § 353, subd. (a); *People v. Harris* (2005) 37 Cal.4th 310, 352; *Platzer v. Mammoth Mountain Ski Area* (2002) 104 Cal.App.4th 1253, 1260- 1261; *In re Joy M.* (2002) 99 Cal.App.4th 11, 19.)

Petitioners contend that as a matter of law Ms. Karabagui was not a United States resident and was thus disqualified under section 8402 from serving as administrator of her deceased husband's estate. Petitioners argue: "[G]iven her presence on a tourist visa, [Ms. Karabagui] has been and is a domicile of Iran, not California." Section 8402 provides in pertinent part: "(a) Notwithstanding any other provision of this chapter, a person is not competent to act as personal representative in any of the following circumstances: [¶] ... [¶] (4) The person is not a resident of the United States." A resident of the United States is someone who actually lives in the United States; someone

who is physically present as an inhabitant. (*Smith v. Smith* (1955) 45 Cal.2d 235, 239; *In re Marriage of Amezquita & Archuleta* (2002) 101 Cal.App.4th 1415, 1419; Black's Law Dict. (8th ed. 2004), residence.) We review the trial court's finding Ms. Karabagui was a resident of the United States for substantial evidence. (*Estate of Barnes* (1921) 187 Cal. 566, 568-569; *Estate of Weed* (1898) 120 Cal. 634, 638; 27B Cal.Jur.3d (2004) Domicile, § 13, p. 631.) At the February 2005 trial, Ms. Karabagui testified: she had come to this country in June 2000 and had remained here continuously; her husband and she had decided to make California their permanent home; Ms. Karabagui had family here, including her sisters; she would be lonely living elsewhere; she intended to remain in the United States; and she was in the process of applying for permanent residence status. Mr. Heller testified Ms. Karabagui had hired him to pursue permanent residence status on her behalf. Mr. Heller "fully expect[ed]" the petition to be granted. This was substantial evidence Ms. Karabagui was a resident of the United States, that she actually lived in this country. There is no merit to the contention that Ms. Karabagui is not a resident of the United States for purposes of section 8402, subdivision (a)(4).

IV. DISPOSITION

The orders under review are affirmed. Soghra Karabagui is to recover her costs on appeal jointly and severally from Sona Hadjian Gharabaghi and Homa Fallah Rastegar.

TURNER, P.J.

I concur:

KRIEGLER, J.

Appendix A

MOSK, J., Dissenting and Concurring.

I respectfully dissent with respect to those portions of the trial court's determination that the decedent, Ahad Karabagui, was domiciled in California; that California law governed the disposition and ownership of non-California property—specifically Swiss bank accounts; and that the Swiss bank accounts were joint tenancy accounts with rights of survivorship in the surviving account-holder—Soghra Karabagui.

Appellants contended in their opening brief that because the decedent was not domiciled in California and was domiciled in Iran, Iranian law should govern as to the devolution of the Swiss bank accounts. This argument was sufficient to deal with the trial court's alternative determination of joint tenancy by virtue of California law and the account agreements themselves. The trial court relied on the account agreements as another ground to invoke California law and referred specifically to Probate Code section 5302 [survivorship]. Appellants argued that Iranian law should apply and therefore did not forfeit their challenge to the trial courts [sic] alternative conclusion.[1] Moreover,

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1. The trial court should have referred to Swiss law. Respondents' attorney testified that Swiss law would look to the law of the state of domicile to determine the rights of a deceased owner of property in Switzerland. That domicile is Iran. (*Estate of Schluttig* (1950) 36 Cal.2d 416, 424 [foreign law when governed by statute a question of law].) In their post-trial brief, appellants argued that Iranian law applied. That they also said in a later section that California law applied (although they said this was "not free from

(Cont'd)

even if the issue is considered not raised in appellants' opening brief, it was addressed in their reply brief. Because respondent dealt with the issue, we can and should exercise our discretion to consider the issues. (See *Greenlining Institute v. Public Utilities Com.* (2002) 103 Cal.App.4th 1324, 1329, fn. 5; *In re Tiffany Y.* (1990) 223 Cal.App.3d 298, 302-303.)

The decedent, an Iranian national, entered and remained in the United States on a "B-2" visa showing that he was a resident of Iran. Title 8 U.S.C. section 1101(INA), subdivision (1)(15)(B), refers to various nonimmigrant aliens to include "an alien ... having a residence in a foreign country which he has no intention of abandoning and who is visiting the United States temporarily for business or temporarily for pleasure." The federal regulations refer to "temporary visitors" and include under that classification the provision, "An alien is classifiable as a nonimmigrant visitor for ... pleasure (B-2) if the consular officer is satisfied that the alien qualifies under the provisions of INA 101(a)(15)(B), and that: [¶] (1)[t]he alien intends to leave the United States at the end of the temporary stay.... [¶] The term *pleasure*, as used in INA 101(a)(15)(B), refers to legitimate activities of a recreational character, including tourism, amusement, visits with friends or relatives, rest, medical treatment, and activities of a fraternal, social, or service nature." (22 C.F.R. § 41.31 (2005).)

(Cont'd)

doubt") should not cause a forfeiture of their argument on appeal that Iranian law applied. The argument below may have been confusing, but it did raise the point now being argued. Moreover, a change in theory of a pure issue of law may be considered on appeal. (*Ward v. Taggart* (1959) 51 Cal.2d 736, 742.)

Appendix A

I agree with the opinion of the Ninth Circuit Court of Appeal in *Gaudin v. Remis* (9th Cir.2004) 379 F.3d 631, 637-638, in which the court held that a Canadian mother lacked domicile in the United States, and therefore could not maintain her action under the Hague Convention in a federal court in Hawaii seeking the return of her children. Gaudin had entered the United States on the same kind of visa issued to the decedent here. The court held that she "is barred by law from possessing the requisite intent to establish domicile in Hawaii." (*Id.* at p. 638.) The court stated as follows: "Notwithstanding the objective evidence of Gaudin's move to Hawaii and the uncertainty concerning her subjective intent to relocate permanently there, we disagree with the district court's conclusion. We base our judgment on the fact that, at present, Gaudin is precluded by law from relocating permanently to the United States. Gaudin is a Canadian citizen who has invoked the Immigration and Nationality Act ('INA') § 101(a)(15)(B), 8 U.S.C. § 1101(a)(15)(B), as the basis for her current presence in the United States. [Footnote omitted] That provision describes, in relevant part, the following class of 'nonimmigrant aliens': 'an alien ... having a residence in a foreign country *which he has no intention of abandoning and who is visiting the United States temporarily for business or temporarily for pleasure.*' (*Id.*, italics in original.) The Supreme Court has cited this provision as an example of a statute in which 'Congress has precluded the covered alien from establishing domicile in the United States.' [*Toll v. Moreno*, 458 U.S. 1, 14 & n. 20, 102 S.Ct. 2977, 73 L.Ed.2d 563 (1982).] Indeed, the Court has referred to Section 1101(a)(15)(B) as a statute in which Congress 'expressly conditioned admission ... on an intent not to abandon a foreign residence or, by implication, on an intent

not to seek domicile in the United States.' [*Elkins v. Moreno,* 435 U.S. 647, 665, 98 S.Ct. 1338, 55 L.Ed.2d 614 (1978) .] In *Carlson v. Reed,* 249 F.3d 876 (9th Cir.2001), we held that even if an alien temporarily in the United States 'could establish' a subjective intent to remain permanently in [a state],' she would 'lack[ ] the legal capacity to establish domicile in the United States.' [*Id.* at 881; see also *Graham v. INS,* 998 F.2d 194, 196 (3d Cir.1993).] ('If petitioner complied with the terms of his temporary worker visa, then he could not have had the intent necessary to establish a domicile in this country. On the other hand, if he did plan to make the United States his domicile, then he violated the conditions of his visa and his intent was not lawful. Under either scenario, petitioner could not establish "lawful domicile" in the United States while in this country on a nonimmigrant, temporary worker visa.')." (*Id.* at p. 637-638.)

Because decedent was not a California domiciliary, the trial court could not apply California law to determine the ownership interests in the Swiss bank accounts. (See Ross, Cal. Practice Guide: Probate (The Rutter Group 2004) § § 14:340, 14:343, pp. 14-71 to 14-72; Rest.2d Conflict of Laws, § 240(2)); Civil Code § 946 ["If there is no law to the contrary, in the place where personal property is situated, it is deemed to follow the person of its owner, and is governed by the law of his domicile"].) There also may be jurisdictional issues with respect to determinations concerning that property. (*Estate of Layton* (1933) 217 Cal. 451, 463-465; 14 Witkin, Summary of Cal. Law (10th ed. 2005) Wills and Probate, § 60, pp. 122-123.)

Appendix A

It is unclear as to the basis of the trial court's determination that the written terms of the Swiss bank account agreements established that the accounts are "joint tenancy accounts with rights of survivorship in the surviving account-holder." One agreement provides, "the present Joint and several account agreement governs only the right of disposal of the Customers vis-à-vis the Bank, regardless of the nature of their internal relations, including the ownership rights of each of the Customers and of their legal successor(s)." Another says, "[t]he heirs to the estate of the deceased account-holder shall succeed him/her in all his/her rights and obligations arising from the joint account." Thus, it appears that recourse to the applicable law rather than the documents themselves is necessary. The trial court referred to Probate Code section 5302, but, as discussed, California law is not applicable.

With respect to the issue of whether Ms. Karabagui, an Iranian national, was qualified to serve as administrator of the estate, I concur in the majority's conclusion. Notwithstanding that she was also admitted into the United States on a B-2 entry visa, she was a resident of California. Such residence has not been held to be inconsistent with the B-2 visa.

A person "may have only one domicile at a given time, but he may have more than one physical residence separate from his domicile, and at the same time." (*Smith v. Smith* (1955) 45 Cal.2d 235, 239.) But, the issue is not without question. The Supreme Court did say that statutes sometimes use the words "residence" and "domicile" interchangeably and cited a prior section of the Probate Code dealing with

jurisdiction for administration of estates. (*Id.; Estate of Glassford* (1952) 114 Cal.App.2d 181, 186.) One could argue that "resident" in Probate Code section 8402 meant "domicile," in which case Mrs. Karabagui would be ineligible to act as personal representative. (Probate Code, § 8402, subd. (a)(4).) Yet, without any authority to the contrary, resident in this statute suggests someone residing in the United States notwithstanding his or her domicile. The reason for the residency requirement appears to relate to the administrator being subject to personal jurisdiction of the court (see *Estate of Damskog* (1991) 1 Cal.App.4th 78, 82; *Estate of Wanamaker* (1977) 65 Cal.App.3d 587, 594) rather than to the requirements of domicile.

Accordingly, I would reverse the judgment with respect to the determination regarding the disposition of the Swiss bank accounts and affirm the determination as to the qualification of Ms. Karabagui to serve as administrator of the estate.

MOSK, J.

APPENDIX B — ORDER OF THE COURT OF APPEAL OF THE STATE OF CALIFORNIA, SECOND APPELLATE DISTRICT, DIVISION FIVE DENYING JUDICIAL NOTICE DATED NOVEMBER 16, 2005

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA, SECOND APPELLATE DISTRICT DIVISION: FIVE

B183178
Los Angeles County No. BP086522

DATE: November 16, 2005

In re the Estate of
Ahad Karabagui
Sona Gharabagui et al.,

THE COURT:

Appellant's Request for Judicial Notice is denied.

APPENDIX C — JUDGMENT OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF LOS ANGELES DATED AND FILED APRIL 15, 2005

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

Case No. BP 086522

In re the Matter of the

Estate of

AHAD KARABAGUI,

Deceased.

JUDGMENT

Date: March 30, 2005
Time: 3:30 p.m.
Place: Division 6
Hon. Stuart M. Rice

This cause came on regularly for trial on January 31, 2005 and February 2, 2005 in Division 6 of the Superior Court of the State of California in and for the County of Los Angeles, the Honorable Stuart M. Rice presiding, pursuant to the stipulation of the parties, sitting without a jury. Petitioners and Respondents Sona Hadjian Gharabagui and Homa Fallah Rastegar ("Petitioners") appeared by their attorneys Ira E. Bilson of the Law Offices of Ira E. Bilson and Jafar Mohsensadeh. Respondent and Petitioner Soghra

Appendix C

Karabagui ("Respondent") appeared by her attorneys John W. Amberg, Lawrence H. Heller, and Melissa G. Rawlins of Bryan Cave LLP.

Evidence, both oral and documentary, was presented by both sides, post-trial briefs were submitted and the cause was argued and submitted for decision on March 30, 2005. The Court rendered its decision orally on the record on March 30, 2005, and directed counsel for Respondent Soghra Karabagui to prepare a proposed Judgment in accordance with said decision. As the trial was concluded in less than eight hours over more than one day and neither party made a request for a Statement of Decision pursuant to Code of Civil Procedure section 632, the Court issues its final judgment herein.

IT IS ORDERED, ADJUDGED, AND DECREED that:

1. It was agreed by the parties, and the Court holds, that it has jurisdiction to decide the following issues: (a) Who should be the general administrator of the Estate of Ahad Karabagui, deceased; and (b) What is the proper disposition of the bank accounts at HSBC Private Bank (Suisse) S.A. and J.P. Morgan (Suisse) S.A. held in the names of Ahad and Soghra Karabagui at the time of his death (collectively, the "Swiss bank accounts"). The HSBC client/account numbers are 4118231 and 4117134 (Exhibit 6). The J.P. Morgan account relationship number is 2677800 (Exhibit 11).

2. The Petition of Soghra Karabagui for Letters of Administration and Authorization to Administer Under the Independent Administration of Estates Act is granted. Soghra

Appendix C

Karabagui is appointed general administrator of the estate of her husband, Ahad Karabagui. The Court will sign an order appointing her as general administrator upon submission of general letters of administration by her counsel.

3. Soghra Karabagui is the surviving spouse of Ahad Karabagui, to whom she was married for 63 years. Mrs. Karabagui is an heir of his estate. Therefore, she is entitled to priority to serve as the administrator under Cal. Probate Code sections 8461 and 8462.

4. There is no evidence to support Petitioners Sona Hadjian Gharabagui and Homa F. Rastegar's allegations that Soghra Karabagui committed any waste, embezzlement, mismanagement, or fraud while serving as Special Administrator of the estate. Therefore, there is no basis under Cal. Probate Code section 8502 to deny the surviving spouse's priority to serve as general administrator.

5. There is no evidence to support Petitioners' allegation that Soghra Karabagui is not qualified to serve as general administrator because she is not a resident of the United States.The Court holds that Soghra Karabagui has satisfied the requirements of residency in LosAngeles, California.

6. Accordingly, the Court denies the Petition of Homa Fallah Rastegar for Letters of Administration and Authorization to Administer under the Independent Administration of Estates Act, and overrules the Objections of Sona Hadjian Gharabagui and Homa F. Rastegar to the Appointment of Soghra Karabagui as general administrator.

Appendix C

7. The law that governs the ownership and disposition of the Swiss bank accounts is the law of the jurisdiction where the decedent, Ahad Karabagui, was last domiciled. Switzerland's Federal Code on Private International Law ("Federal Code") provides in Article 91 that the estate of a person who had his last domicile outside Switzerland shall be governed by the law designated by the State in which he was domiciled, and further provides in Article 92 that the law applicable to the estate shall determine who is entitled to the estate and to what extent.

8. The last domicile of Ahad Karabagui was California. Therefore, in accordance with the Swiss Federal Code, California law shall designate the law governing his estate, including his interest in the Swiss bank accounts. Cal. Civil Code section 946 provides that personal property is deemed to follow the person of its owner, and is governed by the law of his domicile. Therefore, California law shall govern the ownership and disposition of the Swiss bank accounts.

9. Mr. Karabagui having died without a will, California's laws of intestate succession apply. The evidence supports the finding that the Swiss bank accounts are quasi-community property as defined by the Cal. Probate Code. Probate Code section 6401(b) provides that as to quasi-community property, one-half of the property is owned by the decedent and one-half is owned by the surviving spouse. The surviving spouse's intestate share is the decedent's one-half share of the quasi-community property. If the spouse dies intestate leaving quasi-community property, all of the property passes to the surviving spouse without the necessity of a probate proceeding pursuant to Cal. Probate Code section 13500.

Appendix C

As quasi-community property, the Swiss bank accounts are not subject to probate administration in this Court.

10. As a separate ground for the Court's ruling, the documents governing the Swiss bank accounts, including account applications and agreements signed by Ahad and Soghra Karabagui, and the banks' written terms, establish that the Swiss bank accounts were joint tenancy accounts with rights of survivorship in the surviving account-holder (Exhibits 6, 7, 8, 9, 10 & 11). The Swiss bank accounts passed automatically to Soghra Karabagui upon her husband's death, as provided in Cal. Probate Code section 5302.

11. There is no evidence to support any purported claim, right, or interest in the Swiss bank accounts by Petitioners Sona Hadjian Gharabagui or Homa Fallah Rastegar.

12. Respondent Soghra Karabagui's motion for sanctions pursuant to Cal. Code of Civil Procedure section 128.6 is denied.

13. Each party shall bear her own attorneys' fees and costs.

DATED: April 15, 2005

s/ Stuart M. Rice
STUART M. RICE
Commissioner of the Superior Court

APPENDIX D — ORDER OF THE COURT OF APPEAL OF THE STATE OF CALIFORNIA, SECOND APPELLATE DISTRICT, DIVISION FIVE DENYING PETITION FOR REHEARING DATED JANUARY 19, 2006

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA, SECOND APPELLATE DISTRICT DIVISION 5

January 19, 2006

Roy G. Weatherup
Lewis Brisbois Bisgaard & Smith, LLP
221 North Figueroa St. Ste. 1200
Los Angeles, CA 90012-2646

In re the Estate of
Ahad Karabagui
Sona Gharabagui et al.

B183178
Los Angeles County No. BP086522

THE COURT:

Petition for rehearing is denied.

APPENDIX E — ORDER OF THE SUPREME COURT OF CALIFORNIA DENYING JUDICIAL NOTICE AND PETITION FOR REVIEW FILED MARCH 15, 2006

Court of Appeal, Second Appellate District,
Division Five - No. B183178
S140923

IN THE SUPREME COURT OF CALIFORNIA

En Banc

Estate of AHAD KARABAGUI,

DECEASED,

SONA HADJIAN GHARABAGUI et al.,

Petitioners and Appellants,

v.

SOGHRA KARABAGUI,

Objector and Respondent.

Request for judicial notice denied.
Petition for review DENIED.

George, C.J., was absent and did not participate.

/s/ MORENO
Acting Chief Justice

APPENDIX F — CERTIFICATE OF SOLE INHERITANCE/DECREE OF HEIRSHIP DATED AUGUST 7, 2005 AND AMENDED ON SEPTEMBER 17, 2005 (JUDGMENT OF DIVISION 86 OF THE TEHRAN CIVIL COURT IN IRAN)

Judgment Ref.563, dated Aug. 7, 2005

CERTIFICATE OF SOLE INHERITANCE/DECREE OF HEIRSHIP

Ms. Sona Hadjian Gharabagui, represented by counsel Dr. Noureddin Emami and Nassrollah Rastegar, holder of ID. Card No. 35367, by virtue of affidavit and death certificate and photocopies of identity cards belonging to the heirs, has filed a petition Ref. 246/86/84 with this court and stated that the late **Ahad Hadjian Karabagui,** holder of ID. Card No. 35364, passed away on April 29, 2004 at his permanent residence and at the time of his death, his heirs are as follows:

1-The above-named applicant, sister of the said decedent; **2-Soghra Nassirzadeh,** holder of ID. Card No. 35389, permanent wife of The said decedent who has no other heir besides the above-named.

After accomplishing statutory formalities and insertion of one notice in the daily and in the absence of any objection and/or submission of any closed or authentic will and considering Certificate of Estate Tax Ref. 2031/61 dated April 16, 2005, Division 86 of Tehran Public Civil Court met out of docket on Aug. 7, 2005, presided over by the undersigned, and after considering the abstract of records, hereby, confirms that the above-named persons are the sole heirs of the said decedent and that he has no other heir and

Appendix F

that his estate shall come down by inheritance to heirs as follows. After paying off any charges or encumbrances burdening the estate, the remainder shall be distributed among heirs with one-fourth of the value of movables, superstructure of buildings and trees belonging to his permanent wife and the remainder shall come down to the only sister of the decedent.

Validity of the present certificate is not limited by the sums involved.

Signed and sealed
Division 86 of Tehran Civil Court

Appendix F

Official Translation
Islamic Rep. of Iran Justice Administration
Judgment
In the name of the Almighty
Date of hearing: 17.09.2005
Case No.: 606/86/84
Ref. of entry: 746-17.09.2005
Forum: Div. 86 of Tehran Public Civil Court
Claimant: **Sona Hadjian Gharabagui,** represented by counsel Nasrollah Rastegar and Dr. Noureddin Emami, residing at: Unit 7, Aria Bldg, No. 3, Golshahr Blvd., Africa Ave., Tehran
Relief sought: Issuance of a correcting decree of heirship.
Factual background and abstract of record: The claimant has filed a petition for the said relief versus the said defendant. The said petition, having been referred to this division, was put on the cause list. And after due procedure, the court met out of docket and, presided over by the undersigned, announces closure of the hearing and decides, in the light of the contents of the dossier, as follows:
Issuance of a correcting certificate of limitation of heirship

Messrs Nasrollah Rastegar and Dr. Noureddin Emami, acting as counsel for **Ms. Sona Hadjian Gharabagui,** state in their briefs, recorded under ref. of entry 2353 of 31.08.2005 in the records of the clerk's office that "Certificate of heirship issued by this division entered under No. 563 of 07.08.2005 wrongly says that the deceased died at his permanent residence whereas his permanent residence was in Tehran and he expired in California in the USA."

Appendix F

The court, considering the certificate of death No. 2590 of 22.07.2005 and other evidence produced in the wake of the notice sent out by this court and attached to briefs recorded under No. 2502 of 10.09.2005 and taking into account explanations provided by the counsel as per briefs 2578 of 17.09.2005 and in the light of other contents of the dossier, sustains the objection and, relying on the powers conferred by virtue of Art. 38 of the Non-Contentious Jurisdiction Act, rectifies, hereby, **the said certificate, only in so far as place of death of the deceased is concerned, from Tehran (last residence of the deceased) to California. All other provisions of the certificate are right and remain unchanged. No transcript of the initial certificate may be produced from now on without attaching the present certificate.**

President
Div. 86 of Tehran Public Courts
(Signed and sealed)

APPENDIX G — OFFICIAL TRANSLATION OF ARTICLES 6, 7 AND 973 OF THE IRANIAN CIVIL CODE

Official Translation

Translation of articles from the Iranian Civil Code

Art. 6- The laws relating to personal status, such as marriage, divorce, capacity and inheritance, shall be observed by all Iranian nationals, even if resident abroad.

Art.7- Foreign nationals residing on the Iranian territory shall, within the limits laid down by treaties, be bound by the laws and decrees of the state to which they are subject in questions pertaining to their personal status and capacity and similarly in questions relating to rights of inheritance.

Art. 973- If, in accordance with Art. 7 of Vol. I of this Act or the foregoing articles, the law of the foreign country which is to be enforced has made reference to another law, the court is not bound to observe such reference unless the reference was originally made in favor of Iranian laws.

APPENDIX H — EXCERPTS FROM THE TREATY BETWEEN IRAN AND SWITZERLAND

Translation of extracts from "Treaty on Rights of Residence and Judicial Cooperation" between the Kingdom of Iran and the Swiss Confederation.

Art. 8- Nationals of any of the high Contracting Parties shall enjoy, on the territory of the other party signatory hereto and as far as protection of their persons and properties by courts of law and authorities are concerned, the status of the most favored nation.

More particularly, they shall have free access, without any impeding, to courts of law and may go to law in the same conditions as those granted to nationals enjoying the status of the most favored nation clause. Questions regarding poor relief and the ***judicatum solvi*** security shall be the subject of a special declaration of reciprocity attached to the present treaty.

In so far as personal, family and inheritance rights are concerned, nationals of each of the high Contracting Parties shall be subject to provisions of their national laws and the other party may not depart from these laws only if such a departure is on exceptional basis and that it is generally applied to any other foreign state.

The high contracting parties agree that personal, family and inheritance rights i.e. personal status includes the following matters: Marriage, antenuptial settlement on separation or community of estates between the spouses, divorce, separation, marriage portion, paternity, affiliation, adoption,

legal capacity, legal age, guardianship, wardship, disability inflicted by law, testate and intestate succession, liquidation and sharing out a succession or an estate and, in general, all matters pertaining to family rights as well as matters pertaining to personal status.

APPENDIX I — EXCERPTS FROM THE TREATY OF JUNE 16, 1957 BETWEEN THE UNITED STATES OF AMERICA AND IRAN

IRAN

Amity, Economic Relations, and Consular Rights

Treaty signed at Tehran August 15, 1955;
Ratification advised by the Senate of the United States of America July 11, 1956
Ratified by the President of the United States of America September 14, 1956;
Ratified by Iran April 30, 1957;
Ratifications exchanged at Tehran May 16, 1957;
Proclaimed by the President of the United States of America June 27, 1957;
Entered into force June 16, 1957.

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

A PROCLAMATION

WHEREAS a treaty of amity, economic relations, and consular rights between the United States of America and Iran was signed at Tehran on August 15, 1955, the original of which treaty, being in the English and Persian languages, is word for word as follows:

TREATY OF AMITY, ECONOMIC RELATIONS, AND CONSULAR RIGHTS BETWEEN THE UNITED STATES OF AMERICA AND IRAN

Appendix I

The United States of America and Iran, desirous of emphasizing the friendly relations which have long prevailed between their peoples, of reaffirming the high principles in the regulation of human affairs to which they are committed, of encouraging mutually beneficial trade and investments and closer economic intercourse generally between their peoples, and of regulating consular relations, have resolved to conclude, on the basis of reciprocal equality of treatment, a Treaty of Amity, Economic Relations, and Consular Rights, and have appointed as their Plenipotentiaries:

The President of the United States of America:

Mr. Selden Chapin, Ambassador Extraordinary and Plenipotentiary of the United States of America at Tehran;

And

His Imperial Majesty, the Shah of Iran:

His Excellency Mr. Mostafa Samiy, Under Secretary of the Ministry of Foreign Affairs;

Who, having communicated to each other their full powers found to be in due form, have agreed upon the following articles:

Article I

There shall be firm and enduring peace and sincere friendship between the United States of America and Iran.

* * *

Appendix I

Article III

* * *

2. Nationals and companies of either High Contracting Party shall have freedom of access to the courts of justice and administrative agencies within the territories of the other High Contracting Party, in all degrees of jurisdiction, both in defense and pursuit of their rights, to the end that prompt and impartial justice be done. Such access shall be allowed, in any event, upon terms no less favorable than those applicable to nationals and companies of such other High Contracting Party or of any third country. It is understood that companies not engaged in activities within the country shall enjoy the right of such access without any requirement of registration or domestication.

* * *

Article IV

1. Each High Contracting Party shall at all times accord fair and equitable treatment to nationals and companies of the other High Contracting Party, and to their property and enterprises; shall refrain from applying unreasonable or discriminatory measures that would impair their legally acquired rights and interests; and shall assure that their lawful contractual rights are afforded effective means of enforcement, in conformity with the applicable laws.

* * * *